

ZONING BOARD OF APPEALS
Tuesday, May 18, 2010
6:30 P.M. – City Council Chambers
Rockford City Hall, 425 East State Street

Present:

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| ZBA Members: | Alicia Neubauer Dennis Olson Dan Roszkowski Julio Salgado Craig Sockwell |
| Absent: | Aaron Magdziarz Scott Sanders |
| Staff: | Jennifer Cacciapaglia – City Attorney Todd Cagnoni - Deputy Director, Construction Services Sandra Hawthorne – Administrative Assistant Jon Hollander – City Engineer, Public Works Matt Knott – Division Chief of Fire Prevention |
| Others: | Kathy Berg, Stenographer Applicants and Interested Parties |

Sandra Hawthorne explained the format of the meeting will follow the Boards Rules of Procedure generally outlined as follows:

The Chairman will call the address of the application.

- The Applicant or representative are to come forward and be sworn in.
- The Applicant or representative will present their request before the Board
- The Board will ask any questions they may have regarding this application.
- The Chairman will then ask if there are any Objectors or Interested Parties. Objectors or Interested Parties are to come forward at that time, be sworn in by the Chairman, and give their name and address to the Zoning Board secretary and the stenographer
- The Objector or Interested Party will present all their concerns, objections and questions to the Applicant regarding the application.
- The Board will ask any questions they may have of the Objector or Interested Party.
- The Applicant will have an opportunity to rebut the concerns, answer questions of the Objector or Interested Party
- No further discussion from the Objector or Interested Party will occur after the rebuttal of the Applicant.
- The Board will then discuss the application and a vote will be taken.

It was further explained to the public in attendance, applicants, objectors and interested parties that this meeting is not a final vote on any item. The date of the Codes & Regulations meeting was given as Tuesday, June 1, 2010, at 4:30 PM in Conference Room A of this building as the second vote on these items. The public in attendance, applicants, objectors and interested parties were instructed that they could contact Sandra Hawthorne in the Zoning Office for future information and that her phone number was listed on the top of the agenda which was made available to all those in attendance at the beginning of the meeting. The City's web site address for minutes of this meeting are listed on the agenda as well.

A **MOTION** was made by Alicia Neubauer to **APPROVE** the minutes of the April 20, meeting as submitted. The Motion was **SECONDED** by Dennis Olson and **CARRIED** by a vote of 4-0, with Dan Roszkowski abstaining as he was not in attendance at the March meeting.

ZBA 012-10

Applicant
Ward 10

280 North Phelps Avenue, Unit E

Louis Messina / Secrets Apparel & Gifts Inc.

Special Use Permit for the operation of a sexually-oriented bookstore business in a C-3, General Commercial Zoning District

The subject property is located 800 feet northeast of the North Phelps Avenue and East State Street intersection and is currently a sexually-oriented store. Derek Fadden, representing the Applicant, reviewed the request of Special Use Permit. Mr. Fadden was asked by Mr. Sockwell if they have had any issues or violations at this property to which Mr. Fadden responding none that he was aware of. They have had a problem with check cashing from a small percentage of their clients, but no major police issues. He explained they do not have massages, in-house movie booths, or anything along those lines. He stated they are basically a supply store for adult products. Mr. Sockwell asked how busy they were. Mr. Fadden stated around holidays such as Valentine's Day they tend to generate more customers, but on the average there are perhaps 50 customers per day.

Several Board members felt this business was very low key since they had been in operation for a few years without complaint. Mr. Roszkowski asked if this was approved if it opened the door for other adult areas like massage parlor's etc. to which Mr. Cagnoni responded that any activity that occurred at this business would have to meet code and a massage parlor (sexually oriented) requires a Special Use Permit. Hours are 10:00 AM to midnight Monday through Saturday, Sunday 11:00 AM to 9 PM and closed on most major holidays. Mr. Cagnoni estimated the distance from the building to day care was 400 to 450 feet, building to building.

Staff Recommendation is for approval with 4 conditions. Objectors or Interested Parties were present. Two letters of Objection were received prior to the meeting.

M. Shawn Way, CEO of Milestone Inc., 275 North Phelps Avenue, wrote on behalf of the Milestone Dental Clinic located at 275 North Phelps Avenue. His letter stated this clinic serves over 4,000 developmentally disabled individuals, 1,729 of whom are children. Mr. Way felt a sexually oriented business was not appropriate for this location.

Patricia Gibbs, 308 North Mulford Road wrote a letter of objection on behalf of Sunil Puri, owner. Mr. Puri's property is leased for Kinder Care, a daycare that has been in operation for twenty years. His concern was that the children should not risk actual exposure of this type of activity nor the cliental who visit such an establishment. Ms. Gibbs was also present at the meeting. She emphasized the concerns of their letter of Objection, stating they appreciate there have not been any problems as of yet but wished to assure that there are no future problems. Alicia asked if there was a fence around the playground. Ms. Gibbs stated there is a fence around the outside premises, but does not believe there is one around the playground itself. In response, Mr. Fadden clarified there is a chain link fence all along that portion of the property.

Alderman Franklin Beach was present. Ald. Beach stated that had the operation of this business been known at the time of its conception, it would not have been allowed. He stated his argument is not how the business became at this location, but his concern is can this use be limited to this business owner only. He appreciates this use has not had any problems but is concerned with future owners.

In response, Mr. Fadden stated since 2002 there have not been any problems at this property. He stated if any person who is underage attempts to come into the store they are turned away. They do have security cameras outside the property and police coverage on a regular basis in this area.

Mr. Cagnoni stated it is very difficult to tie a Special Use Permit to a specific owner or Applicant. Since this operation has been there since 2002 it would be more difficult to place a sunset clause but suggested the Board ask the Applicant if he would be willing to do this. Mr. Fadden stated he could not respond since he was not the owner of the business.

Attorney Schultz stated this item may have a better chance of being passed at City Council with a statement from the Owner or Representative that they are in agreement to having a sunset clause. Attorney Schultz stated if this could be worked out with the Applicant, the Board could chose to add this as a condition.

Dennis Olson stated the owner, who was absent at this meeting, has already shown that he has not been reliable because he was asked several times in 2008 to comply with code and failed to do so. Mr. Roszkowski also stated this business has been operating for 8 years without securing a Special Use Permit and he feels it has taken too long to come before this Board.

Mr. Cagnoni stated this item is before the board because it does not meet the distance requirements from a Day Care; however, if it did meet those requirements, a Special Use Permit would not be required.

A **MOTION** was made by Dennis Olson to **DENY** the Special Use Permit for the operation of a sexually-oriented bookstore business in a C-3, General Commercial Zoning District at 280 North Phelps Avenue, Unit E. The **MOTION DIED** for lack of a Second.

The Board asked if they could make a condition of Approval that the owner agree to a Sunset clause. Attorney Schultz felt this could not really be done without the owner agreeing to such a clause.

Craig Sockwell stated on an item this important he would like to have the owner come before the Board. The Board asked Staff to review a condition of a time limit.

A **SECOND MOTION** was made by Alicia Neubauer to **LAY OVER** the Special Use Permit for the operation of a sexually-oriented bookstore business in a C-3, General Commercial Zoning District at 280 North Phelps Avenue, Unit E. The Motion was **SECONDED** by Craig Sockwell and **CARRIED** by a vote of 4-1 with Dennis Olson voting Nay.

ZBA 015-20

Applicant
Ward 11

923 23rd Avenue

J. L. Clark

Special Use Permit for 30KW Wind Turbine as a permitted obstruction in an I-1, Light Industrial Zoning District

The subject property is located west of 9th Street with frontage on 23rd Avenue and is currently a manufacturing facility. Charles Jones, representing the Applicant, reviewed the request for Special Use Permit. Mr. Jones stated they have two standard structures on the property currently – a smoke stack and an enclosed water tower with a flag - that are higher than the structures they are proposing. This turbine will be located towards the middle of the property and has a 42 foot diameter. Mr. Hollander stated this would be a relatively small unit compared to most. The unit will be 103 feet in height. Mr. Jones explained the unit will spin at a constant speed regardless of the wind speed. There is a safety control for safety off the unit if necessary.

Staff Recommendation is for Approval with 2 conditions. No Objectors or Interested Parties were present.

A **MOTION** was made by Craig Sockwell to **APPROVE** the Special Use Permit for 30KW Wind Turbine as a permitted obstruction in an I-1, Light Industrial Zoning District at 923 23rd Avenue. The Motion was **SECONDED** by Dennis Olson and **CARRIED** by a vote of 5-0.

Approval is subject to the following conditions:

1. Meeting all applicable building and fire codes.
2. Submittal of final elevation plans with proposed locations of wind turbines for staff review and approval.

ZBA 015-10
Findings of Fact for a Special Use Permit
For 30KW Wind Turbine as a Permitted Obstruction
In An I-1, Light Industrial District at
923 23rd Avenue

Approval of this Special Use Permit is based upon the following findings:

1. The establishment, maintenance or operation of the Special Use Permit will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare of the community.
2. The Special Use Permit will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.
3. The establishment of the special use will not impede the normal or orderly development and improvement of the surrounding property for uses permitted in the I-1 district.
4. Adequate utilities, access roads, drainage and/or necessary facilities have been provided.
5. Adequate measures have been or will be taken to provide ingress or egress so designed as to minimize traffic congestion in the public streets.
6. The special use shall, in all other respects, conform to the applicable regulations of the I-1 Zoning District in which it is located.

ZBA 008-10

Applicant
Ward 14

1445-1447 Woodcreek Bend

Timothy Wehrle

Zoning Map Amendment from R-2, Two-Family Residential Zoning District to R-3, Multi-family Zoning District

Variation to change parking space requirements from 4 ½ spaces to 4 spaces in a R-3, Multi-Family Residential Zoning District

Laid Over from April meeting

The subject property is located on the southwest corner of Woodcreek Road and Old Colony. This item was Laid Over at the April meeting per the request of the Applicant. Timothy Wehrle, Applicant, reviewed his request. Mr. Wehrle presented a written rebuttal, along with photographs, to Staff's recommendation of denial. Mr. Wehrle stated he and his brother purchased this property 4 years ago. The 3rd unit in the lower level is completely finished. Mr. Wehrle stated the rent for these units does not make the mortgage payment. He disagrees with the City requirement that the utilities have to be separated and architectural drawings need to be submitted. He stated his architect told him drawings were not necessary. Mr. Wehrle is asking that this requirement be removed. Mr. Wehrle feels that if he added a separate heating unit, it would increase the risk of fire. He stated Staff's recommendation for Denial is not based on anything concrete. He asked the Board to allow him the discretion to work out the utility arrangements

between the tenants. He is also asking for 4 parking spaces rather than 4 ½ spaces as specified by code. He stated Alderman Robertson supports his request. Mr. Wehrle reviewed the Findings of Facts as submitted in Staff's Report. Mr. Wehrle feels his hardship is caused by the financial conditions of the community. He further explained the lower level has direct access to the street as well as window access. He feels this use is a perfect transition between the R-2 and R-4 Districts and will increase property values of the area as well.

Mr. Sockwell asked how many vehicles are on the premises at this time. Mr. Wehrle stated one unit is not rented at this time, but when it was there were 3 vehicles. Mr. Sockwell felt there could be a potential for 5 vehicles belonging to this property. Mr. Roszkowski also felt this was a concern. Mr. Wehrle stated in the last four or five years there has always been a car parked either on the side or in the front of the property.

Mr. Olson commented that when Mr. Wehrle became a landlord he assumed a risk that all landlords have based on the economy. Mr. Olson felt Mr. Wehrle is looking for a permanent income solution during a time when the lower economy is a temporary situation.

Mr. Cagnoni stated he had spoken with Alderman Robertson on this matter. To clarify his discussion with him, Mr. Cagnoni stated Alderman Robertson stated he did not object to this application, he felt fire suppression was an important discussion to have, and he would take into consideration any further input provided.

It is Staff's opinion that the Applicant needs to comply with all building codes. Mr. Cagnoni also indicated that compliance with the building code requires construction documents and architectural drawings. He stated it is also important to take into consideration that the building code requires fire suppression and the Board may want to be aware that it is within their authority to require fire suppression to the entire building or just for this third unit. Fire Chief Knott stated the entire structure would be looked at by the Fire Department to determine what, if any, fire suppression would be required.

Staff Recommendation is for Denial of both requests. No Objectors or Interested Parties were present.

Mr. Cagnoni reviewed the request and stated if the Board chose to approve, the Applicant would have to comply with Building code requirements to provide what is required to turn this into a legal 3-family. He stated there were options that may not require Fire Suppression, but at this point he could not state whether this option would apply without further investigation or inspection. In this case of R-2 zoning, one family and two family homes could be construction, or a Planned Use Development could be pursued. The Applicant is applying for R-3 zoning which would allow him to legally establish a 3 family.

Ms. Neubauer was concerned that this would create a precedent that other two-families could put an apartment in their basement and call it an R-3. Mr. Cagnoni stated this request is for a Zoning Map Amendment and what the Board may wish to look at is whether it is compatible with the area and base their decision on that. He further stated Staff did not feel it was reasonable based on being surrounded by 2-families. Although the building codes are worth discussion by the Board, some of them are not within the scope of this request for Zoning Map Amendment.

Mr. Olson suggested adding a condition stating the requirement and type of fire suppression system be determined by Staff. Mr. Salgado felt that a condition stating the applicant must meet all building and fire codes would cover this area and all other requirements. Mr. Olson concurred.

A **MOTION** was made by Dennis Olson to **APPROVE** the Zoning Map Amendment from R-2, Two-Family Residential Zoning District to R-3, Multi-family Zoning District; and to **APPROVE** the Variation to change parking space requirements from 4 ½ spaces to 4 spaces in a R-3, Multi-Family Residential Zoning District at 1445-1447 Woodcreek Bend with the addition of condition 1. The Motion was **SECONDED** by Julio Salgado and **CARRIED** by a vote of 5-0.

1. Meeting all Building and Fire Codes

ZBA 008-01
Findings of Fact for a Zoning Map Amendment
From R-2, Two-Family to R-3, Multi-Family District at
1445-1447 Woodcreek Bend

Approval of this Zoning Map Amendment is based upon the following findings:

1. The proposed Zoning Map change is consistent with Article II, Intent and Purpose, of the Rockford Zoning Ordinance for the following reasons:
 - a. This proposal promotes the health, safety, comfort, convenience, morals and general welfare for the citizens of Rockford because it is consistent with the comprehensive plan and surrounding uses;
 - b. This proposal protects the character, scale and stability of the adjacent residential and commercial because the proposed development will meet all development requirements of this site; and
 - c. The proposed map amendment would allow for a reasonable development to take place consistent with the surrounding neighborhood
2. The proposed Zoning Map Amendment is consistent with the approved general plan, the Year 2020 Plan, for the area. The 2020 Plan designates this property as R-2, Two-family Residential.

ZBA 010-10

Applicant
Ward 5

621 Kishwaukee Street

Martin Arteaga/Mayra Fernandez/Mario Hernandez

Variation to change the minimum requirement of 13.3 parking spaces per every 1,000 square feet to allow for expansion of the restaurant from the required 52 parking spaces to 32 parking spaces in a C-2, Limited Commercial Zoning District

Laid Over from April meeting

The subject property is located 112 feet south of College Avenue on the northwest corner of Kishwaukee and Union Streets and is currently a restaurant with adjacent vacant tenant space. The Board felt that the site plan submitted was not sufficient for two-way traffic and there was no exit at the rear of the lot. This item was Laid Over to allow the Applicant to work with Staff on a more feasible plan.

At the current meeting, Patricia Chavez and Mayra Fernandez were present. Ms. Chavez asked if they could Lay Over this item to the June meeting due to a commitment that required them to leave. The Board indicated that this item could be discussed in a short period of time; however, the Applicant felt they were unable to discuss the item at this time.

Staff Recommendation is for Denial.

A **MOTION** was made by Alicia Neubauer to **LAY OVER** the Variation to change the minimum requirement of 13.3 parking spaces per every 1,000 square feet to allow for expansion of the restaurant from the required 52 parking spaces to 32 parking spaces in a C-2, Limited Commercial Zoning District at 621 Kishwaukee Street. The Motion was **SECONDED** by Craig Sockwell and **CARRIED** by a vote of 5-0.

ZBA 011-10

Applicant
Ward 6

1507 Baxter Road

American Bentonite International

Modification of Special Use Permit #025-08 for blending, production, packaging, storage, loading and shipment of bentonite and other natural mineral products

Special Use Permit to allow outdoor storage of bentonite and related materials

Variation to eliminate blacktop paving and replace with gravel for outdoor storage and parking

Variation to eliminate landscaping requirements

Variation to deviate from the Subdivision Ordinance from required 20 feet public road frontage for a subdivided lot to 0 feet

Laid Over from April meeting

The subject property is located west of 11th Street, and north and south of Baxter Road. This item was Laid Over at the April meeting at the request of the Applicant. The property is currently a transload facility with outdoor storage for ReLoad Incorporated. Chris Salek and Kevin Shields were present. Mr. Salek stated this application is to allow the property to be sold to American Bentonite International for their use. Mr. Salek referred to a letter from Staff regarding their submittal of a subdivision. Mr. Cagnoni explained to the Applicant that the Zoning Board did not have a copy of the plat letter as this was not part of the application.

Mr. Salek stated they bought 20 acres of land several years ago, part of which is an easement for sewer. They are looking at selling two acres at the rear of this property to American Bentonite. He described bentonite as being kitty litter. Mr. Salek was uncertain how to present this application and Mr. Cagnoni assisted in explaining the requests of the Applicant. Because the Applicant wishes to establish this particular use on the property, a Modification of Special Use Permit is required. The property does have frontage on Baxter Road. The Applicant has submitted a plan to for a new outlot on the south part of the property that does not have a public street. American Bentonite will have access through the Applicant's property via a permanent easement to the railroad.

Ms. Neubauer asked for further explanation of the request for waiver of blacktop and landscaping. Mr. Salek stated the weight of the equipment would require a very deep asphalt to support the equipment without digging up the asphalt. He felt gravel would be more financial favorable and practical for this use. Mr. Cagnoni stated their partial approval of the paving request is due to Staff's understanding of the problem with heavy equipment and felt paving only those sections designated would work for both Staff and the Applicant.

Staff Recommendation is for Approval of the Modification of Special Use Permit, Denial of the Variations to waive requirements for blacktop and landscaping completely, but Approval of a partial requirement of these two Variations with a portion hard surfaced, and Approval of the Variation to deviate from the Subdivision Ordinance for the frontage requirement. Staff Recommended ten (10) conditions of Approval.

No Objectors or Interested Parties were present; however one letter of Objection was received from Gerald Paulson, Executive Director of the Natural Land Institute, 320 South Third Street. Mr. Paulson's letter stated their concern with storm water runoff, soil erosion and sedimentation from the site during and after construction. They also had concerns about the water quality of the creek adjacent to their property due to water runoff.

In response, Mr. Salek stated the topography would not change at all. The only change would be the construction of a building on a portion of the property. Bentonite cannot be stored outside as it becomes unusable if wet. The product will go directly from the stock car to the storage facility. Mr. Hollander stated drainage is address in the original Plat. He stated this site is pretty much covered with impervious products.

A **MOTION** was made by Craig Sockwell to **APPROVE** the Modification of Special Use Permit for the blending, production, packaging, storage, loading and shipment of bentonite and other natural mineral products; **DENY** the Variation to eliminate blacktop paving and replace with gravel for outdoor storage and parking; **DENY** the Variation to eliminate landscaping requirements; **Approval** of partial requirements with a portion hard surfaced as stated; and **APPROVE** the Variation to deviate from the Subdivision Ordinance from required 20 feet public road frontage for a subdivided lot to 0 feet. Motion was **SECONDED** by Dennis Olson and **CARRIED** by a vote of 5-0.

Approval is subject to the following conditions:

1. The terms of the annexation agreement.
2. Sewer and water shall be installed and connected to the existing building and any new structure on the property.
3. Landscaping as approved in the original Special Use Permit shall be installed.
4. The continuation of rock base/gravel surface shall be restricted to the area used for outside storage and will require Staff review and approval.
5. Paving of the entrance access drive and access easement through the length of the lot to the additional southerly lot and parking areas with blacktop and concrete.
6. Submittal of replat for additional lot for Staff review and approval.
7. Building elevation drawings shall be submitted for Staff review and approval.
8. New site plan shall be submitted, to scale, for new parking and building on the newly created southerly lot.
9. The temporary trailer for the office shall be removed and replaced with a permanent structure prior to additional building permits being issued for the new use.
10. Meeting all applicable Building and Fire codes.

ZBA 011-10
Findings of Fact for a Special Use Permit
For a Modification of Special Use Permit #025-08
For the Blending, Production, Packaging with Storage, Loading and Shipment
Of Bentonite and Other Natural Mineral Products, Outdoor Storage, and
To Deviate From the Subdivision Ordinance for the Frontage Requirement
For a Subdivided Lot in an I-1, Light Industrial District at
1501 and 1507 Baxter Road

Approval of this Special Use Permit is based upon the following findings:

1. The establishment, maintenance or operation of the Special Use Permit will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare of the community.
2. The Special Use Permit will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.
3. The establishment of the special use will not impede the normal or orderly development and improvement of the surrounding property for uses permitted in the district.
4. Adequate utilities, access roads, drainage and/or necessary facilities have been provided.
5. Adequate measures have been or will be taken to provide ingress or egress so designed as to minimize traffic congestion in the public streets.
6. The special use shall, in all other respects, conform to the applicable regulations of the I-1 Zoning District in which it is located.

ZBA 014-10

Applicant
Ward 10

3804 & 4010 East State Street

David Jenkins / Subway

Special Use Permit for a drive-thru facility in a C-2, Limited Commercial District

The subject property is located on the north side of East State Street, south of Morsay Drive and is within the Crest Shopping Center. The proposed use is for a new building containing a Subway Restaurant with a drive-thru window. Dru Meshes, representing the Applicant, reviewed the request.

Mr. Olson felt this entrance was close to the intersection and asked for clarification of traffic flow. The entrance/exit is on the east side of the property. Mr. Roszkowski stated it was about 60 feet from the intersection.

Staff Recommendation is for Approval with 4 conditions. No Objectors or Interested Parties were present. Mr. Hollander, City Engineer, stated there was a concern that the drive-thru lane was a little tight and the Applicant may wish to look at making it a wider. Mr. Cagnoni stated Staff generally wants a wider lane, usually a 16 foot aisle, but this was allowed to go forward with the understanding that the congestion is going to be contained within the property and not on the public street.

A **MOTION** was made by Alicia Neubauer to **APPROVE** the Special Use Permit for a drive-thru facility in a C-2, Limited Commercial District at 3804 & 4010 East State Street. The Motion was **SECONDED** by Craig Sockwell and **CARRIED** by a vote of 5-0.

Approval is subject to the following conditions:

1. That the landscaping be installed for the entire site as part of the building permitting process and shall be consistent with Exhibit D as it relates to the new outlot and shall be as approved for the remaining of the lot as shown in Exhibit E.
2. The building shall be consistent with the submitted site elevations shown on Exhibit F.
3. Must meet all applicable building and fire codes.
4. Submittal of a Tentative and Final plat for Staff's review and approval.

ZBA 014-10
Findings of Fact for a Special Use Permit
For a Drive-thru Facility
In a C-2, Limited Commercial District at
3804-4010 East State Street

Approval of this Special Use Permit is based upon the following findings:

1. The establishment, maintenance or operation of the Special Use Permit will not be detrimental to or endanger the public health, safety, morals, comfort or general welfare of the community.
2. The Special Use Permit will not be injurious to the use and enjoyment of other property in the immediate vicinity for the purposes already permitted, nor substantially diminish and impair property values within the neighborhood.
3. The establishment of the special use will not impede the normal or orderly development and improvement of the surrounding property for uses permitted in the district.
4. Adequate utilities, access roads, drainage and/or necessary facilities have been provided.

5. Adequate measures have been or will be taken to provide ingress or egress so designed as to minimize traffic congestion in the public streets.
6. The special use shall, in all other respects, conform to the applicable regulations of the C-2, Limited Commercial Zoning District in which it is located.

With no further business to come before the Board, the meeting was adjourned at 9:15 PM

Respectfully submitted,
Sandra A. Hawthorne, Administrative Assistant
Zoning Board of Appeals